Before the
Federal Communications Commission
Washington, D.C. 20554

High-Cost Universal Service Support	)	WC Docket 05-337
Federal-State Joint board on Universal Service	)	CC Docket 96-45
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Comprehensive Review of the Universal service Fund Management, Administration, and Oversight	)))	WC Docket No. 05-195
Lifeline and Link-Up	)	WC Docket No. 03-109
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
Schools and Libraries Universal Service Support Mechanism	))	CC Docket No. 02-6
Intercarrier Compensation Reform	)	CC Docket No. 01-92
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	))))	CC Docket No. 00-256
Access Charge Reform	)	CC Docket No. 96-262
Intercarrier Compensation for IP-Bound Traffic	))	CC Docket No. 99-68
Jurisdictional Separations and Referral to the Federal-State Joint Board	))	CC Docket No. 80-286

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES TO REFRESH THE RECORD

David C. Bergmann
Assistant Consumers' Counsel
Chair,
NASUCA Telecommunications
Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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<u>TABLE OF CONTENTS</u>

<u>PAGE</u>

Before the

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In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
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	)	

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I. INTRODUCTION AND SUMMARY

A. INTRODUCTION

In a press release dated May 2, 2008, the Federal Communications Commission ("FCC" or "Commission"), having just instituted a cap on the amount of federal universal service funding going to competitive eligible telecommunications carriers ("CETCs"), acknowledged that the purpose of the cap was to give the Commission time to consider the breadth of universal service issues. The Press Release also invited interested persons to "refresh the record" on universal service and/or intercarrier compensation reform issues,[1] and urged such refreshing to occur "promptly."[2]

[1] "Interim Cap Clears Path for Comprehensive Reform, Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans," FCC Press Release (May 2, 2008) ("Press Release"). Given the magnitude of the issues involved here, it is incongruous that the announcement was made in an informal press release.

[2] Id. Considering the sparseness of comments filed in response to the Press Release thus far, this filing does not seem to be tardy.

With this filing, the National Association of State Utility Consumer Advocates ("NASUCA")[3] replies to the invitation. NASUCA's principal response is to remind the Commission of NASUCA's positions on numerous as-yet-unresolved issues.[4]

In its Press Release, the Commission identified the following dockets that commenters should address:

- *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 ("01-92);
- *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 ("96-98");
- *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 ("96-45");
- *Universal Service Contribution Methodology*, WC Docket No. 06-122 ("06-122");
- *High-Cost Universal Service Support*, WC Docket No. 05-337 ("05-337"); and
- *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195 ("05-195").

The Commission further stated that other proceedings that raise these and related issues include:

- *Lifeline and Link-Up*, WC Docket No. 03-109 ("03-109")

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[3] NASUCA is a voluntary national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (***e.g.***, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] A number of parties have already submitted "refreshments" of the record in the various proceedings. These include filings by the Rural Alliance (June 12 and June 27, 2008), urging adoption of the Missoula Plan; by the Organization for the Protection and Advancement of Small Telephone Companies (May 27, 2008), attaching a white paper on the financial future of rural telephone companies; and by Sprint Nextel (May 12, 2008), including Sprint Nextel's universal service proposal. The latter was addressed by NASUCA in reply comments filed June 2, 2008 in 05-337/96-45. Response to the Rural Alliance filings is found below in the discussion of the Missoula Plan.

- *Rural Health Care Support Mechanism*, WC Docket No. 02-60 (“02-60”)
- *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6 (“02-6”);
- *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256 (“00-256”);
- *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21 (“97-21”)
- *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286 (“80-286”)

In addition to the dockets that the Commission identifies, NASUCA also recommends that the Commission consider the issues under investigation in *Just and Reasonable Rates for Local Exchange Carriers*, WC Docket 07-135 (“07-135”) and *Access Charge Reform*, CC Docket 96-262 (“96-262”), because these two dockets also raise important issues relating to intercarrier compensation and universal service reform.

NASUCA’s interest in these proceedings is that its members represent the customers who are intended to be the beneficiaries of universal service programs and of competition, but also are those who ultimately pay for universal service programs, and who, if regulatory reform goes awry, bear an unfair share of the burden of that reform.

B. SUMMARY

In the dozen years since the enactment of the Telecommunications Act of 1996,[5] thousands and thousands of pages of comments have been filed in the Commission’s multiple interrelated proceedings by a wide range of interests (including incumbent and competitive local exchange carriers, wireline and wireless carriers, rural and non-rural

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

carriers, price cap and non-price cap companies, state regulators, users, consumer advocates and others). The comments addressed complex economic and regulatory matters such as assessments on telecommunications services to fund universal service, mechanisms for distributing universal service support, ways to measure progress in achieving universal service, and improvements to current Byzantine intercarrier compensation arrangements. The passage of time, however, has not simplified the tasks before the Commission, but has allowed the airing of diverse views and the evolution of various proposals. In that time, markets have also changed, which has not simplified the problems being addressed.

Some flawed ideas persist, especially the supposed need to replace carriers' lost revenues – lost due to competitive forces or other changes in the industry – with non-bypassable payments directly from customers through the subscriber line charge ("SLC") or indirectly though the universal service fund ("USF"). Other ideas have evolved, such as implementing reverse auctions on a pilot basis rather than as a wholesale substitution for the existing High-Cost Fund ("HCF"), and expanding universal service subsidies to support increasingly essential broadband access for all consumers, including Lifeline participants. Meanwhile, some unexpected developments have appropriately caused policy shifts. The Commission recently capped the funds CETCs receive because the identical support rule did not lead to the intended consequence of networks newly serving unserved areas, but instead led, in most instances, to subsidizing duplicative networks at a cost of more than a billion dollars.

NASUCA acknowledges that the Commission's responsibility to craft a rational universal service policy, particularly one that does not cater to parochial interests, is daunting. NASUCA especially supports efforts to consider the interrelatedness of the Commission's multiple pending dockets as the Commission seeks to establish coherent and cohesive telecommunications policy. For example, a unified intercarrier compensation plan -- which was one of the Commission's express goals[6] -- should include pricing signals that encourage efficient investment decisions by companies (when considering, for example, whether to deploy their own facilities or to interconnect with other carriers) as well as efficient purchasing decisions by consumers (switched access, for example, should not be priced so high as to inappropriately discourage use of the public switched telecommunications network). A unified intercarrier compensation scheme should also be fair, simple and consistent among industry segments.

The reform of intercarrier compensation bears directly on universal service reform. The FCC correctly stated in the Press Release that "[m]any rural carriers currently collect a significant percentage of their revenues from intercarrier compensation in the form of interstate and intrastate access charges."[7] But the Commission then made the premature conclusion that "[i]f intercarrier compensation revenues are decreased, demand on the Fund increases as offsetting support payments go up."[8]

Although this may be true as a general statement, it is not necessarily true for any individual carrier. Whatever the potential impact of intercarrier compensation reform on carriers' revenue streams (and therefore on the rates they charge for local service), NASUCA urges the Commission to reject the implicit premise that carriers require dollar-for-dollar replacement of lost intercarrier revenues as an integral component of

[6] NASUCA remains unconvinced of the urgency to adopt an absolutely unified plan, but steps do need to be taken to rein in the diversity in the current system.

[7] Press Release at 2.

[8] Id.

intercarrier compensation or USF reform. A myriad of technological and marketplace developments have altered carriers' cost structures and opportunities for generating revenues, which the Commission should consider in tandem with any plans for reform. By way of illustration, using their common local loop platform, carriers are now generating billions of dollars in digital subscriber line ("DSL") revenues that they did not generate five or ten years ago.[9] This new and growing source of revenues should mitigate the impact of intercarrier compensation reform for rural and other carriers.

Furthermore, NASUCA urges the Commission to reject resoundingly a proposition that industry members have been raising for several years in diverse dockets, which seeks to "solve" challenges to reform by raising the SLC.[10] Industry members may find it appealing to "pass the buck" to consumers as a simple way to resolve thorny regulatory problems, but such a tactic would thwart the goal of universal service and unfairly burden consumers. Also, in its deliberations, the Commission should reject efforts by the industry to be shielded from the inevitable revenue-eroding impact of competition.[11] Rather than repeat the many comments and recommendations it has made

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[9] 05-337/96-45, NASUCA Reply Comments (June 2, 2008) at 15, n. 63; 05-337/96-45, New Jersey Division of Rate Counsel Reply Comments (June 2, 2008) at 37. There were 951,583 asymmetric DSL lines in service as of June 2000 and 27,516,171 asymmetric DSL lines in service as of June 2007 (an almost 28-fold increase). Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, ***High-Speed Services for Internet Access: Status as of June 30, 2007*** (March 2008), at Table 1.

[10] For example, in May 2008, Sprint Nextel proposed to shift the entire high cost fund to the subscriber line charge. 05-337/96-45, Sprint Nextel ex parte (May 12, 2008), Attachment. Similarly, the Missoula Plan for intercarrier compensation reform would raise the subscriber line charge to $10.00. 01-92, NARUC Task Force on Intercarrier Compensation, ***The Missoula Plan for Intercarrier Compensation Plan*** (July 18, 2006), Appendix C at 20. There is a multi-year history of widespread industry efforts to raise the SLC as an integral component of intercarrier compensation plans: A proposal submitted by Qwest in 2005 would have recovered all revenues lost as a result of elimination of intercarrier compensation rates from an uncapped SLC imposed on end users, and a BellSouth proposal similarly would have raised the SLC as part of intercarrier compensation reform. See 01-92, NASUCA Reply Comments (July 20, 2005) at 66, 68-69; 01-92, NASUCA Reply Comments (November 5, 2001) at 5-10.

[11] NASUCA has raised this concern in numerous pleadings. See, e.g., 01-92, NASUCA Reply Comments (July 20, 2005) at 3; 01-92, NASUCA ex parte (February 13, 2006), Attachment.

previously in the numerous dockets that the Commission identifies, NASUCA highlights herein its major arguments.[12]

II. INTERCARRIER COMPENSATION REFORM

A. DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME, CC DOCKET NO. 01-92

NASUCA agrees that the current regime of widely varying rates for the same functionality depending on the type of call and the carriers involved creates opportunities for abuse and arbitrage, and cannot be sustained in the long run. NASUCA therefore also agrees that reform is needed. However, that reform need not be radical. Moreover, the reduction of disparity among intercarrier rates need not automatically or substantially impact end-user charges, nor should it substantially or automatically impact the universal service fund.[13]

Any need for replacement revenue caused by a reduction in intrastate rates -- as clearly demonstrated by the carrier -- should be recovered initially from local rates and state universal service funding.[14] States should retain control over intrastate local services and intrastate access rates, and should be expected to meet any target rates in their own way. However, the Commission could establish a temporary transitional fund within the federal USF to provide an inducement to the states to reach the target levels in a timely manner.

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[12] NASUCA has submitted hundreds of pages of comments in these various dockets. This pleading highlights some of NASUCA's major analyses and recommendations, but should not be construed as a complete presentation of the many, in-depth analyses and recommendations provided previously by NASUCA to the Commission. NASUCA incorporates by reference its numerous filings submitted in the dockets identified at the outset of these comments.

[13] 01-92, NASUCA Initial Comments (May 23, 2005) at 2.

[14] Id. at iv.

Similarly, on the interstate side, reductions in access revenues should not automatically translate into increases in the SLC or the USF. Certainly, this should not be on a dollar-for-dollar basis, especially in the absence of all of a carrier's costs and revenues.

Many of the pleadings before the Commission regarding intercarrier compensation reform have focused on the fatally-flawed "Missoula Plan," a plan with narrow support and widespread opposition,[15] which would have dire consequences for consumers. The Commission should definitively reject the Missoula Plan, should not use the Missoula Plan as a foundation for intercarrier compensation reform, and "should waste no more time or energy on the Missoula Plan."[16] Instead, the Commission should focus its efforts on NASUCA's more rational plan. As NASUCA has discussed in numerous pleadings, and reiterates herein, NASUCA's intercarrier compensation plan would more successfully unify disparate compensation regimes and more fairly balance industry and consumer needs than would the Missoula Plan.

NASUCA incorporates by reference its various comments submitted in 01-92.[17] NASUCA reiterates the conclusions of its detailed analysis: "The Missoula Plan does not result in unitary rates; the Missoula Plan imposes large increases on local rates in the form of increases in the federal subscriber line charge ("SLC"); and the Missoula Plan

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[15] ***See*** e.g., 01-92, NASUCA Reply Comments (February 1, 2007) at 2, 4-5 (describing Missoula Plan opponents).

[16] Id. at 5.

[17] See, e.g., 01-92, NASUCA Initial Comments (August 20, 2001); 01-92, NASUCA Reply Comments (November 5, 2001); 01-92, NASUCA ex parte (December 14, 2004); 01-92, NASUCA Reply Comments (July 20, 2005); 01-92, NASUCA ex parte (February 13, 2006); 01-92, NASUCA Initial Comments (October 25, 2006); 01-92, NASUCA ex parte (December 19, 2006); 01-92, NASUCA Reply Comments (February 1, 2007); 01-92, NASUCA Initial Comments (March 19, 2007); 01-92, NASUCA Reply Comments (April 12, 2007); 01-92, NASUCA ex parte (August 3, 2007).

results in a huge increase in the USF – at least a 32% increase in a fund that is already bloated and unsustainable."[18]

The Missoula Plan would make users bear the entire burden – and more! -- resulting from reductions in intercarrier compensation rates. As NASUCA previously explained:

> Under the Missoula Plan, [intercarrier compensation] ICC rates are reduced $6 billion, and end user rates go up $6.9 billion. This increase in end user rates consists of a $4.7 billion increase in SLCs; a $1.5 billion increase in the USF in the form of the so-called "Restructure Mechanism"; a $0.3 billion increase in the USF High Cost Loop Fund; a $0.225 billion increase in the USF Low Income Fund; and a $0.2 billion increase in the USF for creation of an Early Adopter Fund. As large as these USF increases are, the numbers advertised by the Missoula proponents are grossly understated, as explained below.
>
> Although end users will have to absorb more than $6.9 billion in additional costs under the Missoula Plan, carriers are not required to pass through any of the reductions in ICC rates to end user rates. As a result, there is no guarantee or commitment that the $6.0 billion in ICC rate reductions will find their way to customers. This is especially true because the service that will be the primary beneficiary of the ICC rate reductions -- long distance service -- has virtually ceased to exist as an independent, highly competitive market. Major retail long distance providers -- AT&T and MCI -- have been acquired by legacy landline companies SBC and Verizon, and most stand-alone long distance carriers now act as wholesale providers to other carriers.[19]

The proposed increase to a $10 SLC (and even higher as a result of the proposed inflation adjustment) would harm consumers[20] without achieving the goal of unified intercarrier compensation rates. Access rate disparities would continue, and therefore

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[18] 01-92, NASUCA Initial Comments (October 26, 2006) at 1-2; 01-92, NASUCA Reply Comments (February 1, 2007) at 7.

[19] 01-92, NASUCA Initial Comments (October 26, 2006) at 2-3 (footnote omitted).

[20] NASUCA showed that the average residential rate would increase from $24.75 to $28.75. 01-92, NASUCA ex parte (December 19, 2006).

opportunities for arbitrage would persist. Furthermore, the Missoula Plan would unlawfully pre-empt state jurisdiction over intrastate access rates. For these reasons, the Commission should reject the Missoula Plan.

As NASUCA demonstrated previously, "[t]he radical revamping of rates and interconnection rules called for by the Missoula Plan amount to nothing more than a desperate attempt to insulate a large portion of current intercarrier compensation revenues from the inexorable trends away from the circuit-switched network."[21] Further, the Missoula Plan overlooks the substantial revenue stream that ILECs derive from broadband service:

> Adding insult to injury, there is no consideration in the Missoula Plan of the additional revenues that ILECs gain from serving new broadband lines which are outside of the current ICC system. In other words, ILECs are losing lines and MOU as consumers drop traditional landlines and add broadband lines to access the Internet. However, the revenue gains from broadband line additions are totally out of the picture as far as the Missoula Plan is concerned.[22]

As NASUCA has demonstrated comprehensively in previous comments, the Missoula Plan is deeply flawed and would without question lead to increases in SLCs, with low-volume customers disproportionately harmed. Furthermore, it is unlikely that carriers would pass through to consumers their savings in long distance charges. This asymmetry would harm consumers without yielding any offsetting benefits.

Crucially, as discussed in the introduction to these comments, it would be entirely antithetical to sound economics and public policy to adopt intercarrier compensation reform that seeks to protect incumbent carriers' historic revenue streams. As NASUCA explained last year: "As interstate MOU continue to decline, and 'the additional revenues

[21] 01-92, NASUCA Initial Comments (October 26, 2006) at 14.

[22] Id. at 24.

that ILECs gain from serving new broadband lines which are outside of the current intercarrier compensation system' continue to grow, the disparity between carrier revenues lost and the recovery guaranteed by the Missoula Plan continues to grow."[23] As NASUCA further explained, "[t]his makes adoption of the Plan even more harmful to consumers."[24]

A modified version of the Missoula Plan was presented, supplemented by incorporating a "Federal Benchmark Mechanism" ("FBM"). The supplemented version also merits unambiguous rejection by the Commission.[25] NASUCA's original analysis continues to be apt:

> It is notable that the FBM is proposed as a means to correct one of the glaring inequities of the Missoula Plan, that being "the effects of the Plan on 'early adopter' states, i.e., those states that have already taken action to substantially reduce intrastate access charges." The Missoula Plan as originally presented "solved" the problem of intercarrier compensation by substantially reducing intercarrier payments, but replaced every dollar in lost revenue **and more** with payments from the subscriber line charge ("SLC") and from the federal universal service fund ("USF"). The FBM "solves" **this** problem by adding an additional $800 million to the federal USF! This eases some of the burden on "early adopter" states, but does so by increasing the burden on everyone else. Thus the cost to consumers of reducing intercarrier rates by $6 billion rises to over $7 billion under the FBM.[26]

For these reasons as well, the Commission should reject the Missoula Plan, both as it was originally filed, and as amended by the proposed FBM.

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[23] 01-92, NASUCA ex parte (August 3, 2007) at 2, quoting NASUCA Initial Comments (October 25, 2006) at 24.

[24] 01-92, NASUCA ex parte (August 3, 2007) at 2.

[25] The FBM was presented to the Commission just prior to the February 1, 2007, date set for the filing of reply comments on the so-called Missoula Plan. See 01-92, Missoula Plan Supporters and the Indiana Utility Regulatory Commission, Maine Public Utilities Commission, Nebraska Public Service Commission, Vermont Department of Public Service, Vermont Public Service Board and Wyoming Public Service Commission ex parte (January 30, 2007).

[26] 01-92, NASUCA Initial Comments (March 19, 2007) at 2-3 (footnotes omitted, emphasis in original).

But disparate access rates do require attention and reform.[27] The Commission should adopt NASUCA's gradual plan for reforming intercarrier compensation.

> Each year a new target ICC rate would be established by the FCC. Interstate ICC rates above this target would step down to the target level; rates below the target level would be maintained. The final target rate for the fifth year for non-rural carriers would be $0.0055 per MOU. The final target rate for rural carriers would be $0.0095 per MOU. These are the same targets currently used for traffic sensitive interstate access rates of price cap carriers under the CALLS plan. Using these same rates as targets for ICC reform means that there will be very little interstate revenue impact for non-rural carriers. Any revenue shifts will be caused by reduced intrastate access rates for all carriers, and reduced interstate access rates for rural carriers. In comparison, the Missoula Plan reduces the final target termination rate for large carriers by 90% from its current interstate level, resulting in excessive revenue shifts.[28]

NASUCA has described the details and merits of its proposed gradual plan for intercarrier compensation reform in various pleadings.[29] The key elements of its plan are as follows:

1. **Recognize Cost Causation.** Any plan for intercarrier compensation plan should recognize that a carrier that originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier.[30] As a result, the cost of intercarrier compensation cannot be zero. Nevertheless, carriers remain free to enter into negotiated bill and keep arrangements.

2. **Address Disparate Rates.** The current widely varying rates for intercarrier compensation create arbitrage opportunities and treat different types of carriers differently. The NASUCA proposal would minimize, but not eliminate these disparities over an interim five year period:

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[27] See, e.g., 01-92, NASUCA Initial Comments (October 26, 2006) at 15 (chart illustrating rate disparity).

[28] Id. at 76-77 (note omitted). See id. at 76-92 for a detailed discussion of the NASUCA plan and its compatibility with the Commission's goals and authority. See also 01-92, NASUCA Initial Comments (May 23, 2005); 01-92, NASUCA Reply Comments (July 20, 2005); 01-92, NASUCA ex parte (December 16, 2004).

[29] See, e.g., 01-92, NASUCA Reply Comments (July 20, 2005) at 71-72; 01-92, NASUCA ex parte (December 14, 2004); 01-92, NASUCA ex parte (February 13, 2006).

[30] Only with regard to originating traffic is it appropriate for a carrier to recover its costs entirely from its own customers; transiting and terminating traffic both involve one carrier's customers imposing costs upon another carrier.

- Each year a new target interstate intercarrier compensation rate would be established by the FCC. Interstate intercarrier compensation rates above this target would step down to the target level; rates below the target rate would be maintained.
- The final target rate for the fifth year would be $0.0055 per minute.
- The FCC could impose a different final target rate for rural carriers, such as $0.0095 per minute.
- States would be encouraged to match the target rate for intrastate rates. However, each state would retain authority to reach the target rate in its own way.
- As the disparity among intercarrier compensation rates is reduced, and as the total amount of revenue at issue declines, carriers will have greater incentive to enter into negotiated bill and keep arrangements. Incentives to bypass the public switched telephone network ("PSTN") will also be reduced.

3. **No Final Solution.** With due respect for the uncertainty of the future of the telecom market and telecom technology, NASUCA believes that the FCC should take steps now to minimize intercarrier compensation as a problem. However, NASUCA does not believe that a final solution is advisable or possible. The FCC should assess the situation at the end of five years to determine if additional measures are necessary with regard to intercarrier compensation.

4. **Maintain Current Edge Definitions and Wholesale/Retail Relationships.** The NASUCA proposal does not require any change in the current definition of network "edges" or wholesale and retail relationships. The reduction in intercarrier compensation target rates over time should also reduce arbitrage opportunities related to network and/or relationship definitions.

5. **Respect State Jurisdiction.** The federal/state jurisdictional dichotomy as set forth in federal law would be respected. The FCC would exercise control over interstate rates and provide guidance to states with regard to annual target intercarrier compensation rates. States would retain control over intrastate local and access rates.

6. **Maintain Current USF Mechanisms.** NASUCA's intercarrier compensation target rates will maintain intercarrier compensation as a revenue source for carriers, although at a reduced level. If the reduction in intercarrier compensation rates creates a demonstrated need for additional interstate funding for rural carriers, it should be recovered through existing universal service mechanisms.

7. **No increase in SLC Caps or Mandatory Increase in Local Rates.** Any demonstrated need for additional intrastate funding created by reduction in intercarrier compensation rates should be recovered through local rates or state universal service funds, as determined by the state.

This is the solution to the primary intercarrier compensation dilemma that should be adopted.

On June 27, 2008, the Rural Alliance filed comments in 01-92 in response to the Press Release. Those comments take essentially a three-level approach to the intercarrier compensation issue. The Rural Alliance argues first for the adoption of the Missoula Plan,[31] but if the Missoula Plan cannot be adopted at this time expresses a preference for "simplified, yet still comprehensive intercarrier compensation reform,[32] and if **that** cannot be accomplished, arguing for an even-more simplified version.[33] There are aspects of each proposal with which NASUCA can agree, consistent with the special needs of rural carriers, but others are antithetical to the necessary principles for intercarrier compensation reform expressed above.

The Rural Alliance supports the Missoula Plan; the many flaws in the Plan were discussed at length above. The Rural Alliance's comments note that "[w]hile the Plan may not be perfect from any party's perspective, it reflects an extraordinary effort and encompasses many valuable concepts that warrant consideration by the Commission.[34] Not to beat a dead horse, but the Missoula Plan is so far from perfect as to be unadoptable, despite the efforts of the fairly narrow coalition that supported it.

As also discussed above, the central flaw of the Missoula Plan is highlighted in the Rural Alliance's statement that "[f]rom a rural rate-of-return ILEC perspective, the Plan hinges on the creation of a Restructure Mechanism to retain access revenues

[31] 01-92, Rural Alliance Comments (June 27, 2008) at 6-7.

[32] Id. at 7-11.

[33] Id. at 11-12.

[34] Id. at 6.

displaced when intercarrier compensation rate levels are reduced."[35] The Rural Alliance is quite clear: "The Restructure Mechanism is an access cost recovery mechanism for rural rate-of-return ILECs…."[36] As such, the Restructure Mechanism runs up against a central legal problem pointed out by NASUCA:

> [T]he Commission's authority under Section 201 is limited to establishing "just and reasonable" charges for interconnection. While the Commission may establish interconnection rate elements, there is no basis under Section 201 for assessing all other carriers (and their customers) to replace access revenues lost as a result of ICC reform.[37]

On the other hand, if the Restructure Mechanism is a universal service provision, under the Commission's current rules it must be portable to competitive ETCs, which the Rural Alliance opposes.[38]

With regard to the fallback from the Missoula Plan, "simplified, yet still comprehensive" intercarrier compensation reform, the Rural Alliance has a nine-point plan, as follows, with NASUCA's responses added:

1. Rather than imposing the plan on states, allow state commissions to opt in and agree that intrastate access rate levels and structure should mirror interstate access rate levels and structure as part of the implementation process.[39] ***Merely making the restructuring mechanism an opt-in for states does not cure its fundamental flaws.***

2. Adopt the Restructure Mechanism.[40] ***See above.***

3. Implement a Federal Benchmark Mechanism to address the differences between states that have already undertaken intercarrier compensation

[35] Id.

[36] Id. at 7.

[37] 01-92, NASUCA Initial Comments (October 26, 2006) at 61.

[38] 01-92, Rural Alliance Comments (June 27, 2008) at 7.

[39] Id.

[40] Id. at 7-8.

reform, and those that have not.[41] *See above and 01-92, NASUCA Comments and Reply Comments on the Federal Benchmark Mechanism.*[42]

4. Cap interstate switched access rate levels for rural rate-of-return ILECs, but only if the ongoing shortfall in recovery of rural rate-of-return ILEC interstate switched access revenue requirements above the cap can be assigned to and recovered from a universal service element.[43] *Here, the Rural Alliance admits that there is a "loss of switched access minutes"*[44] *and that its purpose is to provide that "the remaining cost based access revenue requirement is assigned for recovery to a universal service element."*[45] *This express support of revenue requirements is not one of the statutory purposes of the federal USF.*

5. Adopt changes that will resolve interconnection disputes and ease implementation of interconnection agreements.[46] *NASUCA believes that these changes are possible and would be beneficial.*

6. Implement the Comprehensive Solution for Phantom Traffic proposed by the Supporters of the Missoula Plan (Industry Standards for the Creation and Exchange of Call Information) and in NECA's petition in order to require all interconnected voice service providers originating and transiting voice traffic to accurately transmit call signaling information and to provide call detail information to the terminating carrier when the call is terminated on the PSTN.[47] *NASUCA has consistently supported efforts to address the problem of Phantom Traffic.*[48]

7. Adopt Embarq's petition forbearing from enforcing the enhanced service provider ("ESP") exemption on Internet protocol voice calls that terminate

[41] Id. at 8.

[42] 01-92, NASUCA Initial Comments (March 19, 2007); 01-92, NASUCA Reply Comments (April 12, 2007).

[43] 01-92, Rural Alliance Comments at 8-9.

[44] Id. at 8.

[45] Id.

[46] Id. at 9.

[47] Id. at 10.

[48] 01-92, NASUCA Initial Comments (October 26, 2006) at 92-93; 01-92, NASUCA Reply Comments (February 1, 2007) at 17.

to the PSTN.[49] *NASUCA supported Embarq's Petition.*[50]

8. Confirm that all interconnected interexchange voice service calls terminating on the PSTN are subject to existing access charge compensation regardless of the technology employed to originate the call.[51] *This is fundamentally the same as Point 7.*

9. Revise the basis of recovery for the USF to a broader and more sustainable base such as working telephone numbers and connections, including all broadband services and connections.[52] *NASUCA has consistently opposed the proposed shift to a numbers-based or connections-based mechanism, as, inter alia, a) not needed; b) shifting the burden of support; c) subject to substantial arbitrage; and d) expensive. On the other hand, NASUCA has supported requiring broadband service revenues to support the USF, particularly if the USF is explicitly used to support broadband service.*

As a second fall-back, the Rural Alliance states,

> If the Commission is currently unable to adopt either the "Missoula Plan" or the "Simplified, but Comprehensive Reforms" discussed above because certain of the proposals contained in each of the plans involve jurisdictional issues that have yet to be resolved or involve the creation of a new access recovery mechanism, then at the very least the Commission should adopt intercarrier compensation changes that are squarely within its jurisdiction.[53]

The Rural Alliance then recommends adoption of its points 4-9 listed above. NASUCA agrees that the Rural Alliance's main proposals do indeed have jurisdictional problems (as did the Missoula Plan) and do involve the creation of a new access recovery mechanism as to which the Commission lacks authority. Yet the Rural Alliance's point 4

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[49] 01-92, Rural Alliance Comments (June 27, 2008) at 10.

[50] *Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47* U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-8, In the Matter of FEATUREGROUP IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(a)(1), and Rule 69.5(b), Broadband Industry Practices, WC Docket No. 07-256, NASUCA Comments (February 19, 2008) and Reply Comments (March 14, 2008).

[51] 01-92, Rural Alliance Comments (June 27, 2008) at 10-11.

[52] Id. at 11.

[53] Id. (footnote omitted).

shares the latter problem. With regard to points 5-9, NASUCA's position is explained above.

NASUCA understands the importance of these revenues streams to the rural carriers. But that importance cannot obscure the fundamental illegality and unfairness of the Missoula Plan. As NASUCA has consistently argued, the Commission must reject the Missoula Plan.

B. INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC, CC DOCKET NO. 99-68

As noted above, carriers that impose cost on other carriers should be obligated to pay a reasonable portion of those costs. This holds true for Internet service provider ("ISP")-bound traffic as it does for voice. In the earlier days of Internet protocol service, most of the ISP-bound traffic was dial-up; the opportunities to take advantage of the imbalance of traffic flows (where carriers with ISPs as customers originated very little traffic) resulted in many carriers that reaped windfalls from reciprocal compensation. The Commission adopted a solution to this problem in the *ISP Remand Order*[54] that is still subject to some dispute.[55] It is undisputable, however, that the amount of dial-up Internet traffic is diminishing and that the incentive and ability of carriers to take advantage of this arbitrage opportunity is also decreasing.

C. TRAFFIC PUMPING, CC DOCKET NO. 07-135

Speaking of arbitrage, "traffic pumping" refers to strategies by local exchange carriers -- principally smaller rural carriers -- to inflate their terminating access traffic, resulting in high returns to the carriers derived from switched access charge revenues.

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[54] 99-68, Order on Remand and Report and Order, FCC 01-131, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

[55] See 99-68, Core Communications ex parte (May 14, 2008).

Traffic pumping is a symptom of the deficiencies in the present inconsistent scheme of intercarrier compensation, which encourage arbitrage. NASUCA filed reply comments with the Commission in January 2008 regarding traffic pumping,[56] in a proceeding in which many commenters addressed broad questions related to intercarrier compensation in general. As recommended by NASUCA, however, the Commission could address the traffic pumping issue as a separate matter, on an expedited basis.[57]

NASUCA recommends that carriers dropping out of the National Exchange Carrier Association ("NECA") pool, should be required to include a provision in their tariffs that if they experience a significant increase in traffic (i.e., a fifty fold increase[58]), on a per-access line basis, they will "file a mid-course correction to recognize the increased traffic" before a proposed two-year review period ends.[59] Those carriers should be prohibited from returning to the NECA pool for a "significant" period of time. Carriers should also be prohibited from including rebates to customers in their costs of service.[60]

NASUCA urges the Commission to disregard the arguments that traffic pumping is good for consumers or that prohibiting arrangements between the rural ILECs and their partners will violate the First Amendment rights of consumers.[61] Further, the Commission need not undertake a detailed review of cost and demand relations, or

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[56] 07-135, NASUCA Reply Comments (January 16, 2008).

[57] Id. at 2.

[58] NASUCA continues to believe that a "stimulation figure of a 50-fold increase per access line over the same quarter in the previous year would address the problem. At this level, a trigger would excuse 'changes in carrier circumstances and larger market trends.'" Id. at 8-9, quoting OPASTCO Comments, at 10.

[59] 07-135, NASUCA Reply Comments (January 16, 2008) at 2-3.

[60] Id. at 3.

[61] Id. at 13. See also id. at 14 for other excuses that should be dismissed.

comprehensive regulation, but instead should adopt NASUCA's "limited, targeted remedy for traffic pumping."[62] It does appear that, contrary to NASUCA's earlier opinion, there may also be a need to address traffic-pumping activities by rural competitive local exchange carriers.[63]

III. UNIVERSAL SERVICE

A. OVERVIEW

As NASUCA has stated in multiple pleadings,[64] a high priority for the Commission must be to define what constitutes "reasonably comparable" and affordable rates and services, and what would make the USF "sufficient," as required by the remand from the 10th Circuit U.S. Court of Appeals.[65] Without these determinations, the Commission will be unable to assess whether any particular high cost fund is sufficient, and whether the nation is achieving its universal service goals. NASUCA urges the Commission to resolve these essential definitional matters as it embarks on its next phase of high cost reform.[66]

NASUCA has participated in the many phases of the Commission's investigation of universal service, and through that participation has submitted voluminous detailed

[62] Id. at 15-16. NASUCA recommends that the Commission not outlaw all revenue-sharing arrangements, as they may be appropriate in some circumstances. Id. at 16.

[63] See id. at 20.

[64] *See, e.g.*, 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008) at 5-6, 9; 05-337, NASUCA Reply Comments (July 2, 2007) at 5; 05-337/96-45, NASUCA Reply Comments (May 27, 2006).

[65] *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*").

[66] To assist the Commission in making these critically important determinations, NASUCA presented data to the Commission that analyzed rates in more than 10,000 wire centers nationwide, served by non-rural carriers, and including a range of urban to rural areas. 05-337/96-45, NASUCA Initial Comments (March 27, 2006); see also 05-337/96-45, NASUCA Reply Comments (May 27, 2006).

analyses of USF support, local loop costs and local rates as well as specific and comprehensive recommendations for reform. Most recently, the Commission sought comment on comprehensive reform of high cost universal service support,[67] specifically on the November 2007 Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board").[68] NASUCA addressed the Joint Board's recommended decision, and, among other things, indicated its support for the proposed cap on high cost support, and for creation of a three-part fund focusing on broadband, mobility and provider of last resort responsibilities respectively.[69] Rather than reiterate the comprehensive analyses and recommendations from its recent filings, NASUCA incorporates them here by reference.[70]

B. UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY, WC DOCKET NO. 06-122

The FCC's mechanism for collecting universal service contributions affects the fairness of universal service and the equitable distribution of the USF burden among consumers. The mechanism for USF assessment is a matter distinct from the requisite size of the USF.[71] NASUCA continues to oppose mechanisms that would base USF assessments on telephone numbers or connections because, among other things, a

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[67] 05-337/96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. January 29, 2008) ("*Comprehensive Reform NPRM*").

[68] 05-337/96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) ("*Comprehensive Reform Recommended Decision*").

[69] 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008) at 5.

[70] Id.; see also 05-337/96-45, NASUCA Reply Comments (June 2, 2008).

[71] As a separate and important matter, as discussed above, NASUCA urges the Commission to adopt reform that ensures that the high cost fund is no larger than the amount demonstrated to be necessary. All else being equal, if the USF is greater than the amount necessary to achieve universal service goals, then it will fall on consumers to bear the burden of an unduly high USF surcharge.

connections-based assessment would unfairly burden low-volume consumers.[72] Last year, NASUCA adopted a resolution opposing the adoption of a numbers or connections-based USF assessment mechanism.[73] As previously stated,

> For more than four years, the National Association of State Utility Consumer Advocates ("NASUCA") has been expressing its opposition -- on behalf of telephone consumers nationwide -- to proposals to move from the current revenue-based mechanism for collection for the federal universal service fund ("USF") to a numbers- or connections-based mechanism. The fundamental reason for this position is that such a change is simply not necessary, because the current mechanism -- subject to additional refinement -- is indeed sustainable for the long-term.[74]

In their recently-filed comments on the *Joint Board Recommended Decision*, a number of carriers reiterated their support for a numbers-based contribution mechanism.[75] These expressions of support added nothing new to the flawed rationales previously presented.

NASUCA reiterates that, as it "has previously demonstrated, the revenue-based mechanism is actually more robust and equitable than a connection-based mechanism, even when the needs of the fund grow substantially."[76] Further,

> NASUCA continues to oppose these proposals because a connection-based mechanism inevitably shifts USF responsibility from those who use interstate services (as with the current revenue

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[72] 05-337/96-45, NASUCA ex parte (January 11, 2008); 05-337/96-45, NASUCA ex parte (September 25, 2007); 96-45, NASUCA Supplemental Comments (February 28, 2003); 96-45, NASUCA Initial Comments on Staff Study of Contribution Mechanisms and Reply Comments on Contribution Mechanisms (April 18, 2003); 96-45, NASUCA Reply Comments (May 16, 2003); 05-337/96-45, NASUCA ex parte (January 22, 2007); 05-337/96-45, NASUCA ex parte (April 6, 2007).

[73] 05-337/96-45, NASUCA ex parte (January 11, 2008) at 2 and attachment (NASUCA Resolution 2007-11, "Opposing Proposals for the Adoption of a Numbers-Based or Connections-Based Universal Service Contribution Mechanism").

[74] Id. at 1, quoting 05-337/96-45, NASUCA ex parte (September 25, 2007).

[75] 05-337/96-45, CenturyTel Comments (April 17, 2008) at 11-12; TDS Comments (April 17, 2008) at 11, n. 25; WTA Comments (April 17, 2008) at 28-29.

[76] 96-45/01-92/03-133/04-36/06-122, NASUCA ex parte (January 22, 2007), citing 96-45, NASUCA Reply Comments (May 16, 2003) at 7-11, and further stating at note 10 that "[n]o party has, to NASUCA's knowledge, attempted to refute these findings."

> mechanism) to those who merely have access to the local network, regardless of their interstate usage, or even of their intrastate usage. This inevitably shifts the burden of supporting the entire USF and all the programs it contains onto lower use and lower income consumers. This shifting of burdens is not in the public interest.[77]

In addition, unless a numbers- or connections-based mechanism assesses all number or connections equally, the adoption of such a mechanism will create a whole new set of opportunities for arbitrage and gaming.[78]

NASUCA also recommends that the Commission assess broadband revenues for USF purposes, especially to support broadband deployment in unserved areas and to support subsidized broadband rates for Lifeline participants.[79] Some have raised the concern that an assessment on broadband services would suppress demand for broadband; according to this view, the elasticity of demand for broadband service is sufficiently high that a broadband assessment would lead to a loss of consumer welfare. NASUCA acknowledges the economic theory underlying this concern, but disputes its application to today's real world broadband market. NASUCA is unaware of any reliable empirical evidence that supports the theory that broadband demand is as elastic as opponents to a broadband-based assessment would suggest. Furthermore, the positive externalities that correspond with the network effects of increasing broadband subscription (that is, the larger the number of subscribers, the more value that each user

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[77] 05-337, NASUCA ex parte (February 27, 2006), which refuted the primary arguments for the move away from the revenue-based mechanism to a connections- or numbers-based mechanism. The ex parte also referenced 96-45, NASUCA Initial Comments (September 30, 2005), including the appendices, which discussed these issues at length. See also 06-122, NASUCA Reply Comments (September 8, 2006) at 2-8.

[78] Some of the arguments for special treatment for specific number uses show such treatment to be in the public interest, for example for Community Voice Mail ("CVM") and for automotive telematics.

[79] NASUCA has previously argued that broadband service should be assessed for the traditional high-cost fund and the rest of the USF. Those recommendations remain.

derives) outweigh any negligible loss in consumer welfare due to speculative demand suppression.

In summary, a numbers-based or connections-based contribution mechanism would be unnecessary and harmful to consumers, and therefore should be rejected by the Commission.[80] And the Commission should assess broadband services to support broadband deployment and subsidized broadband rates for income-eligible households.

C. HIGH-COST UNIVERSAL SERVICE SUPPORT, WC DOCKET NO. 05-337

NASUCA's very recent comments in response to the *Comprehensive Reform Recommended Decision* comprehensively discussed the issues in 05-337. Thus little refreshing is necessary, other than the following brief reiteration: Presently, approximately $4.3 billion in high cost support is distributed to CETCs, non-rural and rural carriers throughout the country,[81] with approximately $1 billion going to wireless CETCs, and the balance going to wireline incumbent carriers. NASUCA commends the Commission for its recent *Comprehensive Reform NPRM* regarding comprehensive HCF reform and supports the recommended overall cap of $4.5 billion on high-cost funding.[82] NASUCA also supports the Joint Board's proposed establishment of new separate funds for broadband, mobility, and providers of last resort.[83] As NASUCA stated, "the framework that has been put before the FCC represents an imaginative, comprehensive,

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[80] ***See***, e.g., 96-45/01-92/03-133/04-36/06-122, NASUCA ex parte (April 6, 2007).

[81] According to USAC, the actual 2007 HCF disbursements were $4.29 billion. USAC 2007 Annual Report at 43.

[82] *Comprehensive Reform Recommended Decision*, ¶ 26.

[83] 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008). See id., Appendix 1 for details regarding NASUCA's specific suggestions for a transition from the existing wireless funding under the high-cost mechanism to the Mobility Fund.

and far-reaching reform that the FCC should adopt."[84] NASUCA also reiterates its recommendations that:

> The goal of all three of the funds should be that support will be available only for high-cost areas where, absent support, the services would not be available at all, would not be available at affordable rates, or would not available at rates comparable to those charged for the services in urban areas. And only a single network should be supported in any specific area.[85]

Furthermore, as much as possible, the HCF should be based on the forward-looking costs of an efficient network, but the funding should not exceed a recipient's embedded costs.[86] The antiquated model that the Commission presently uses desperately requires updating. Further, the Commission should condition distribution of universal service funds based on an appropriate demonstration that the carrier is providing quality services at reasonable rates throughout their supported areas.

Similarly, NASUCA's recent comments on the identical support rule and on the use of reverse auctions to determine high-cost universal service support require no refreshing.[87] To the extent necessary, NASUCA incorporates those comments here.

D. FEDERAL STATE JOINT BOARD ON UNIVERSAL SERVICE, CC DOCKET NO. 96-45

NASUCA has submitted comments in numerous phases of the Commission's proceedings in 96-45, most recently in its comprehensive filings submitted on April 17, 2008 and June 2, 2008. NASUCA incorporates those comments by reference.

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[84] Id. at 4.

[85] Id. at 58.

[86] Carriers that have "disinvested" in their networks would have embedded costs below their modeled costs.

[87] 05-337/96-45, NASUCA Initial Comments on Reverse Auctions (April 17, 2008); 05-337/96-45, NASUCA Comments on the Identical Support Rule (April 17, 2008).

E. COMPREHENSIVE REVIEW OF THE UNIVERSAL SERVICE FUND MANAGEMENT, ADMINISTRATION AND OVERSIGHT, WC DOCKET NO. 05-195

The efficient administration and management of universal service support is critically important to prevent consumers from bearing the cost of abuse and fraud. All consumers should have affordable access to the network, but consumers should not be saddled with the costs of inefficiencies and fraud associated with USF programs.[88] NASUCA concurs that audits are an essential component of a well-functioning and efficient universal service program.[89] Consumers ultimately bear the cost of waste and fraud.

The Commission released the *Management Report and Order* in August 2007 adopting "measures to safeguard the Universal Service Fund ('USF') from waste, fraud, and abuse as well as measure to improve the management, administration, and oversight of the USF."[90] The Commission acknowledged in the *Management Report and Order*, however, that it had addressed just a few of the issues it originally raised in its Notice of Proposed Rulemaking in 05-195, and stated that it would consider other issues in a subsequent Report and Order.[91]

In the *Management Report and Order*, the Commission declined to adopt any audit requirements because of the "extensive auditing program initiated by the

[88] 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2008) at 61-62. See also 05-195/96-45/02-6/02-60/03-109/97-21, New Jersey Rate Counsel Initial and Reply Comments (filed October 18, 2005 and December 16, 2005 respectively).

[89] According to the *TR Daily*, the "FCC's Office of the Inspector General has identified nearly $6.2 million in fraudulently obtained universal service funding that should be recovered as part of a first round of audits it has finished conducting, and plans to bulk up its oversight in the coming year using additional funds it has received by nearly doubling the amount of audits it will conduct during fiscal year 2008." "OIG Is Beefing Up Audit Efforts to Crack Down on USF Cheats, IG Tells Congress," *TR Daily*, May 30, 2008.

[90] 05-195/96-45/02-6/02-60/03-109/97-21, Report and Order, FCC 07-150 (rel. August 29, 2007) ("*Management Report and Order*"), ¶1.

[91] Id., ¶ 4.

Commission's Office of the Inspector General."[92] The Office of Inspector General ("OIG") recently released its semi-annual report detailing the results of those audits.[93] The OIG concluded that while there is "general compliance" with program and Commission rules, "erroneous payments" make up over 9% of payments for "most USF program segments."[94] The erroneous payment rate for the HCF, however, was estimated at 16.6% (or $618 million).[95] As noted in the OIG Report, the Improper Payments Information Act establishes a 2.5% threshold for erroneous payment rates (or an amount greater than $10 million) above which a program is considered "at risk."[96] The High Cost, Schools and Libraries, and Low Income programs all exceeded this threshold. A second round of audits is now ongoing for the High Cost and Schools and Libraries Program.[97] NASUCA once again urges the Commission to ensure, to the greatest extent possible, that USF payments – which ultimately come from and are supposed to benefit consumers – are being properly used.

F. LIFELINE AND LINK-UP, WC DOCKET NO. 03-109

The Lifeline and Link-Up programs are essential components of the Commission's universal service programs because they render telecommunications services more affordable for those consumers least able to pay for access to and use of the telecommunications network. An important goal of universal service is to help low-

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[92] Id., ¶ 19.

[93] Federal Communications Commission, Office of the Inspector General, ***Semiannual Report: October 1, 2007 – March 31, 2007***, Kent R. Nilsson, Inspector General (rel. May 30, 2008) ("OIG Report"). See pages 17-22 of the Report for a summary of the OIG's USF oversight audit activities.

[94] Id. at 20.

[95] Id. at 21.

[96] Id.

[97] Id.

income consumers without telephone service connect to and maintain basic local telephone service. Households with lower incomes continue to have lower penetration rates.[98] The telephone penetration rate for households with incomes below $20,000 is at or below 92.2%; in sharp contrast, the penetration rate for households with incomes over $60,000 is at least 98.6%.[99]

The Lifeline and Link-Up programs function efficiently largely because they target support directly to consumers. By contrast, high cost support is distributed to carriers, and, therefore, lacks the comparable accountability and the tangible benefit for consumers that the Lifeline and Link-Up programs offer.

In 2007 comments responding to the Commission's invitation to refresh the record from 2003, NASUCA made several recommendations to improve the effectiveness of the Lifeline and Link-Up programs.[100] NASUCA now reiterates its major recommendations:

- The FCC should raise the income eligibility threshold from 135% to 150% of the Federal Poverty Guideline.[101] (Indeed, especially in the current economic situation, and with widespread increases in local rates, the Commission should now consider raising the eligibility threshold even higher.) The increase in the dollar amount of support that would result from increasing the number of eligible

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[98] 03-109, NASUCA Comments to Refresh the Record (August 24, 2007) at 5-6.

[99] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States*, data through November 2007 (rel. March 2008) at 1.

[100] 03-109, NASUCA Comments to Refresh the Record (August 24, 2007); 03-109, NASUCA Reply Comments (September 10, 2007).

[101] 03-109, NASUCA Comments to Refresh the Record (August 24, 2007) at 3-10.

consumers would represent a positive sign that universal service goals are being fulfilled.[102]

- The definition of income used in the calculation for determining eligibility should be clarified.[103]
- The FCC should establish federal minimum outreach requirements for ETCs, which states could supplement.[104] ETCs should be required to provide evidence of their efforts to reach out to customers who may be eligible for, but not yet participating in, Lifeline/Link-Up.[105] In assessing whether federal minimum outreach requirements or guidelines are necessary, the Commission should conduct a comprehensive analysis of, among other things, existing outreach efforts.[106]
- The scope of the Lifeline/Link-Up program should be expanded to encompass CVM.[107] CVM provides free, 24-hour nationwide voicemail to people in crisis, connecting them to the telecommunications network for purposes of finding jobs, housing, and other needs. It is a precursor to a consumer obtaining full telephone service.
- The Commission should revamp the system that is used to verify that current

[102] Id. at 9.

[103] Id. at 11. More specifically, non-cash assistance (e.g., food stamps) provided to low-income families should not be considered as income for the purposes of Lifeline and Link-Up eligibility.

[104] Id. at 12.

[105] Id. at 12-16.

[106] See id., at 14-15 for details about fourteen specific steps that the Commission should undertake as part of its research and analysis of Lifeline and Link Up outreach programs.

[107] Id. at 20-21.

Lifeline and Link-Up participants are still eligible for these benefits. Too many eligible participants have been wrongly excluded because of overzealous attempts to reduce fraud and abuse.[108]

The Commission should encourage concerted outreach programs, conducted by ETCs and subject to state oversight, to increase participation in the Lifeline and Link-Up programs, which subsidize monthly and nonrecurring rates for income-eligible consumers. Furthermore, Lifeline customers should be exempt from any incremental increase in monthly charges that result from intercarrier compensation reform. Finally, the Commission should subsidize broadband service for Lifeline participants.[109] NASUCA has been an active participant, with the Commission and the National Association of Regulatory Commissioners, on the Lifeline Task Force, and commits to continuing that important work.

On a related note, in August 2005, NASUCA sent a letter to FCC Chairman Kevin J. Martin seeking the commencement of an inquiry "into the source (methodological and/or actual) of the decline in reported telephone subscribership."[110] The Commission has never formally or informally responded to that request, although the matter of subscribership levels for consumers of all incomes continues to be a concern. The most recently available statistics, released in March 2008, indicate that nationwide telephone subscribership has dropped over the past five years from a high of 95.5% in

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[108] Id. at 16-19.

[109] 05-337/96-45, NASUCA Initial Comments (May 31, 2007) at 24-25.

[110] NASUCA letter to Honorable Kevin J. Martin, Chairman, Federal Communications Commission (August 11, 2005) ("NASUCA Subscribership Letter").

March of 2003 to 94.9% in November 2007.[111] This decline cannot be attributed to consumers "cutting the cord" and opting to use wireless phones and/or alternative technologies for telephone service as opposed to wireline connections; the FCC study counts such households as telephone subscribers.[112] NASUCA observed that this decline comes at a time when the federal universal service fund "has reached its highest levels ever."[113] NASUCA reiterates that the apparent lack of access of an increasing percentage of Americans to basic telephone services "cannot be overlooked as the nation moves to a broadband-based telecommunication system."[114]

IV. OTHER DOCKETS

A. JURISDICTIONAL SEPARATIONS AND REFERRAL TO THE FEDERAL-STATE JOINT BOARD, CC DOCKET NO. 80-286

Without adequate access to information about carriers' costs and revenues, the Commission cannot assess the impact of high cost and intercarrier compensation reform on the economic viability of the nation's carriers. Furthermore, unless and until the Commission ensures that carriers are assigning and allocating proper amounts of investment and expenses to unregulated services, it would be entirely inappropriate to

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[111] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States*, data through November 2007 (rel. March 2008 ("FCC Subscribership Report") at Table 1. NASUCA notes that telephone subscribership was even lower in some of the intervening reporting periods, e.g., 92.4% in March 2005. The data shows telephone subscribership fluctuating from month to month; this raises additional questions about whether this is a methodological or actual phenomenon.

[112] Id. at 2. The question asked in the Current Population Survey, from which the FCC data are derived, is: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone." Id.

[113] NASUCA Subscribership Letter at 2.

[114] Id.

raise subscriber line charges, whether as a replacement for supposed lost revenues or for any other reasons.

In its detailed comments and supporting documents submitted in 80-286, NASUCA demonstrated, among other things, how the information asymmetry that exists between the Commission and the carriers it regulates harms consumers. NASUCA also demonstrated that carriers largely get a "free ride" over the common network in their deployment of lucrative broadband services. As NASUCA demonstrated, "[c]onsumers of intrastate regulated services are bearing unfairly the cost of **billions of dollars** of carriers' investment in plant and related expenses that should be assigned and allocated to unregulated lines of business and interstate services."[115] NASUCA further explained:

> Carriers' forays into unregulated lines of business, which "free-ride" over a common platform (without bearing a commensurate share of common costs), likely yield excessive interstate regulated rates. Therefore, the Commission should re-initialize interstate rates. In particular, the most immediate impact on consumers would come from reevaluating the subscriber line charge ("SLC"), which is an interstate rate that customers pay as part of their local service bill. **NASUCA submits that if carriers properly allocated and assigned costs to unregulated services, the SLC -- which, for the BOCs and other price cap carriers, is currently based on their CMT revenue requirement -- would likely decline, as the cost of regulated services would decline**.[116]

NASUCA's earlier recommendation continues to be relevant:

> Most importantly, the Commission should reject the proposal, set forth in the 'Missoula Plan' recently filed in CC Docket No. 01-92, to increase SLCs as a means of revenue recovery, unless and until a close examination of carriers' properly allocated costs justify such an increase. Such an assessment depends critically on the Commission's findings about the Bells' exorbitant overearnings in the pending special access proceeding, and a careful review of the

[115] 80-286, Initial Comments of NASUCA, New Jersey Division of Rate Counsel, and Maine Office of the Public Advocate (August 22, 2006) ("NASUCA, et al. Initial Comments") at 4 (emphasis added).

[116] Id. at 9 (cites omitted; emphasis added).

> Bells' assignment and allocation of costs to unregulated lines of business.[117]

As cited by NASUCA, numerous consumer advocates and state public utility commissions emphasized the need for separations data.[118] Similarly, in an AT&T forbearance proceeding[119] (and the similar Verizon, Frontier, Embarq and Qwest forbearance proceedings[120]), numerous commenters explained the importance of cost and other accounting data.[121] As stated by NASUCA, et al:

> Carriers' efforts to discourage regulators from examining and enforcing proper cost assignment and cost allocation are thinly disguised efforts to protect carriers' unregulated operations from bearing a fair share of the cost of common network facilities and resources. Carriers' economic incentive is to maximize the percentage of the cost of the common network that they recover from regulated, non-competitive services, and to minimize the percentage that they assign and allocate to their unregulated services. Therefore, since carriers lack any compelling reason to comply with existing separations requirements and to contribute to separations reform, Commission and state review and reform of

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[117] Id. at 9-10 (cites omitted).

[118] See generally, 80-286, Reply Comments of NASUCA, New Jersey Division of Rate Counsel, and Maine Office of the Public Advocate (November 20, 2006) ("NASUCA, et al. Reply Comments").

[119] The FCC granted AT&T forbearance from cost assignment rules in April. *In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket 07-21*; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket 05-342, Memorandum Opinion and Order, FCC 08-120 (rel. April 24, 2008). NASUCA has appealed this decision. *NASUCA v. FCC*, D.C. Cir. Case No. 08-1226. In addition, Sprint Nextel Corporation, Ad Hoc Telecommunications Users Committee, COMPTEL, and Time Warner Telecom Inc. filed a joint Petition for Reconsideration of the FCC's Order on May 27, 2008.

[120] *In the Matter of Petition of Verizon For Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273; *In the Matter of Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *In the Matter of Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *In the Matter of Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c),* WC Docket No. 07-204 ("07-273/07-204").

[121] See, e.g., 07-273, Joint Reply Comments of the New Jersey Division of Rate Counsel and NASUCA (March 17, 2008), at 8; 07-21, NASUCA Reply Comments (April 9, 2007) at 3, citing numerous commenters.

> ILECs' cost accounting is essential to protect consumers from anticompetitive and excessive rates.[122]

NASUCA therefore urges the Commission to reject the pending petitions for forbearance from cost accounting and other record-keeping requirements in 07-273 and 07-204.

In its separations reply comments, NASUCA discussed the relationship between high-cost support and separations data:

> - High Cost Loop Support "depends on 'study area average unseparated loop cost per working loop.' This in turn depends upon separations rules (but not the allocation rules) used to categorize outside plant and central office facilities)."
>
> - "The 'Local Switching Support' program depends upon each company's 'projected annual unseparated local switching revenue requirement.' This number, in turn, depends upon the separations rules to categorize plant within central office plant accounts."
>
> - "The 'Interstate Common Line Support' program depends on each carrier's interstate 'Common Line Revenue Requirement.' This in turn depends on the costs assigned to the interstate jurisdiction by separations rules."
>
> Contrary to assertions in industry's initial comments, and as the Idaho PUC aptly explains, separations continues to be relevant and important to enable regulators to achieve various important goals, such as universal service, just and reasonable rates, assessing requests for exogenous treatment, and evaluating price cap plans.[123]

NASUCA also explained the link to interstate access charges:

> For example, the large incumbent carriers have used the exogenous change process to significantly increase their interstate access rates. The CALLS Order reduced the average traffic sensitive rate for the large carriers to $0.0055. Currently only one carrier,

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[122] 80-286, NASUCA, et al. Reply Comments (November 20, 2006) at 3.

[123] Id. at 19-20, citing and quoting initial comments of Idaho Public Utilities Commission at 8; citing also Iowa Utilities Board at 4, and Joint Comments of Vermont Public Service Board, Vermont Department of Public Service and Nebraska Public Service Commission at 9.

> Qwest, has a rate that has remained at the level required by the CALLS Order. The other large carriers' current rates are substantially above the CALLS $0.0055 average traffic sensitive rate.[124]

NASUCA demonstrated comprehensively in other pleadings that, if the Commission decides to abandon the separations process, it is essential that federal and state regulators *first* re-initialize rates. Otherwise, the present interstate and intrastate rate levels and rate structures will perpetuate unfair cost recovery and cross-subsidization by regulated services of competitive offerings.[125] Furthermore, as a matter of law and sound policy, the Commission should reject carriers' attempt to preclude states from assigning and allocating costs to the interstate and to unregulated categories.[126]

B. MULTI-ASSOCIATION GROUP (MAG) PLAN FOR REGULATION OF INTERSTATE SERVICES OF NON-PRICE CAP INCUMBENT LOCAL EXCHANGE CARRIERS, CC DOCKET NO. 00-256/IN THE MATTER OF ACCESS CHARGE REFORM, CC DOCKET NO. 96-262

In 2000, in the *CALLS Order*, the Commission created interstate access support ("IAS") (as well as SLC increases) to offset reductions in interstate access charges for price-cap companies.[127] The *CALLS* universal service support was supposed to have lasted only five years and have ended July 1, 2005[128]; clearly, that did not happen. Furthermore, unlike the high cost model support, which is based on forward-looking costs, IAS is based on a carrier's embedded costs, and thus does not assess efficient costs.

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[124] 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 20, citing *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 31, 2000) ("*CALLS Order*"), ¶¶140-159; see also 47 C.F.R. §61.3(e) and (qq).

[125] 80-286, NASUCA et al. Initial and Reply Comments (August 22, 2006 and November 20, 2006), see also 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 26.

[126] 80-286, NASUCA et al. Reply Comments (November 20, 2006) at 49-54.

[127] *CALLS Order*, ¶ 2.

[128] Id., ¶ 198.

Interstate common line ("ICL") support for rate-of-return carriers similarly represents a "revenue make-up" corresponding with the access charge reductions that the *MAG Order* required.[129] ICL support is also based on embedded costs.

IAS was intended to replace revenues that ILECs lost from the reduction in interstate access charges, and yet interstate minutes of use have declined steadily.[130] IAS --"frozen in time" -- is replacing a declining revenue stream. NASUCA reiterates its recommendation that the Commission eliminate IAS and consider the purpose and continuing need for ICL.[131] MAG support and CALLS support should be eliminated for the reasons discussed in NASUCA's various filings.[132]

V. CONCLUSION

The Commission's universal service and intercarrier compensation programs undeniably require reform. NASUCA supports timely and rational changes, but urges the Commission:

- Not to burden consumers by allowing the industry to increase subscriber line charges as a way to "remedy" flaws in the universal service system or as a way to make up lost revenues resulting from intercarrier compensation reform.
- To reject incumbent carriers' efforts to shield themselves from the impact of competition through "make-whole" revenue proposals.

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[129] 00-256, *et al.*, Second Report and Order, *et al.*, FCC 01-304, 16 FCC Rcd 19613 (2001) (*"MAG Order")*.

[130] See 05-337/96-45, NASUCA Initial Comments on Comprehensive Reform (April 17, 2007) at 49.

[131] Id. at 50.

[132] Id.; see also 05-337, NASUCA Reply Comments (November 8, 2006), at 7-8.

- To consider, as it assesses the impact of reform on carriers, the substantial and increasing source of ILEC revenues derived from broadband services.
- To ensure that any reform yields affordable rates for voice service and broadband access for all consumers, including Lifeline participants.
- To encourage industry and state efforts to increase Lifeline participation and the quality of basic local telephone service.

Respectfully submitted,

/s/ David C. Bergmann
David C. Bergmann
Assistant Consumers' Counsel
Chair,
NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910

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